

THE MARK O. HATFIELD

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Anti-trust/Experts

Judge Owen M. Panner denied a motion to strike an expert report defining a relevant market. The court held that it was permissible for an expert to derive his opinion from real world experience through his extensive knowledge of the region's timber market. Judge Panner also held that, in these particular circumstances, plaintiffs could supplement their expert reports to respond to issues raised in defendant's summary judgment motion.

Plaintiffs' Sherman Act monopolization claim survived summary judgment based upon Judge Panner's finding that genuine factual issues existed relative to the relevant market, whether red alder lumber was interchangeable with other types of lumber and whether defendant possessed monopoly power in the relevant market. The court also noted that the fact that plaintiffs were not retail consumers was not fatal to their claims; plaintiffs stated a viable claim by asserting that defendant attempted to prevent them from obtaining adequate timber supplies to operate their sawmills. Confederated

Tribes of Siletz Indians of Oregon v. Weyerhaeuser Co., CV 00-1693-PA (Opinion, Jan. 21, 2003).

Plaintiffs' Counsel:

Michael E. Haglund

Defense Counsel:

Julia E. Markley

## Procedure

A former employee who was asserted various Title VII claims against his former employer was partially successful in establishing at a bench trial that he was retaliated against when he was denied an interview for a subsequent job opening. The court awarded damages on the retaliation claim and dismissed all other claims. Thereafter, the same plaintiff filed another action against his former employer and several individuals employed by the original defendant. Plaintiff claimed that the original defendant and the other named individuals committed fraud and perjury in the first trial and engaged in a civil conspiracy against him. Judge Anna J. Brown held that all

communications made during the first trial by the defendants were subject to an absolute privilege and that all of plaintiff's other claims were barred by res judicata. Plaintiff's civil conspiracy claim brought under 42 U.S.C. 1985 was dismissed under the intracorporate conspiracy doctrine since all of the named employees were acting within the course and scope of their employment. Schmitz v. Mars, Inc., CV 02-1183-BR (Opinion, March 6, 2003).

Plaintiff's Counsel:

Gordon S. Gannicott

Defense Counsel:

David P.R. Symes

**7** A real estate developer who filed a federal action against a City and certain City officials for constitutional claims arising out of building permit denials was barred from re-litigating claims and issues previously raised or that could have been raised in a prior state court proceeding. Judge Ann Aiken held that the federal claims involved the same transactional facts and that all newly named defendants were

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either agents of or in privity with defendants named in the original action. The court also noted that plaintiff's claims were time barred under Oregon's 2-year statute of limitations. Eddings v. City of Jefferson, CV 02-6121-AA (Opinion, Feb. 2003).

Plaintiff: Pro Se

Defense Counsel:

Jens Schmidt

**7** A plaintiff filed a shareholder liability action in a Malheur County Court. Defendants filed a notice of removal to the U.S. District Court for the District of Idaho based upon diversity of citizenship. The Idaho court remanded the action, noting that it lacked jurisdiction and that defendants should have filed notice in the U.S. District Court for the District of Oregon. Defendants received the Idaho court's order 29 days after receiving plaintiff's complaint; they filed another notice of removal in the District of Oregon 2 days later. Defendant's acknowledged that their removal notice was 1 day late under the statute, but they argued that this delay should be excused because the Idaho court should have transferred the action rather than remanding to Malheur County.

Judge Anna J. Brown rejected defendants' arguments, noting the lack of any legal support for an extension of the 30-day limitations

period. The court also noted that it could not review the Idaho court's actions. Judge Brown granted plaintiff's motion to remand. Andrews v. Cunningham, CV 02-158-BR (Opinion, Feb. 2003).

Plaintiff's Counsel:

Larry Sullivan

Defense Counsel:

Steven M. Stoddard

## Employment

Six former airport security screeners filed an action against a federal agency and a private company hired by the federal government to test airport screeners. The plaintiffs claimed that defendants engaged in discriminatory practices in the application and hiring process as part of the post-9/11 federalization of airport security positions. Plaintiffs had been employed at PDX as security screeners for a private company and were not rehired after unsuccessfully attempting to apply with the federal agency. Plaintiffs claimed race, age and gender discrimination and sought an immediate injunction to allow re-testing and hiring of anyone who passed the re-test.

Following an evidentiary hearing, Judge Robert E. Jones denied plaintiffs' requests for injunctive relief to the extent their

claims were premised upon alleged violations of federal anti-discrimination laws. Judge Jones noted that even though the tests may have unfairly disadvantaged plaintiffs, there was no evidence of unlawful discrimination and plaintiffs failed to satisfy administrative pre-requisites under Title VII and the ADEA.

Injunctive relief also could not be premised upon alleged state law violations. As for plaintiff's claims under ORS 659A, Judge Jones held that a federal agency could not be liable for violations of state employment law and that the private company hired by the federal agency was not a proper party. Judge Jones noted that the private testing company was also not an "employment agency" as defined by ORS 659A. Sharr v. Department of Transportation, CV 02-1513-JO (Opinion, March 3, 2003).

Plaintiffs' Counsel:

Don S. Willner

Defense Counsel:

Ronald K. Silver (Local)

Courtney C. Dippel